

IN THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF CALIFORNIA

SAMUEL GLEN SHAMBLIN, CASE NO. CV F 05-0500 OWW LJO

Plaintiff,

**FINDINGS AND RECOMMENDATIONS TO
DISMISS ACTION**

vs.

FRAN RALEY, et al.,

Defendants.

BACKGROUND

Plaintiff Samuel Glen Shamblin (“plaintiff”) is a state prisoner and proceeds pro se in this action. This Court issued its July 13, 2006 order (“July 13 order”) to require plaintiff, no later than August 17, 2006, to pay the \$350 filing fee for this action or to submit a fully completed in forma pauperis application to demonstrate he is entitled to proceed without prepayment of fees. The July 13 order admonished plaintiff: “**Failure to timely comply with this order will result in a recommendation to dismiss this action.**” (Bold in original.) Plaintiff failed timely to submit the \$350 filing fee or an application to proceed without prepayment of fees.

DISCUSSION

Failure To Comply With Orders

This Court’s Local Rule 11-110 provides that “. . . failure of counsel or of a party to comply with these Local Rules or with any order of the Court may be grounds for the imposition by the Court of any and all sanctions . . . within the inherent power of the Court.” District courts have inherent power to

1 control their dockets and “in the exercise of that power, they may impose sanctions including, where
2 appropriate . . . dismissal of a case.” *Thompson v. Housing Auth.*, 782 F.2d 829, 831 (9th Cir. 1986).
3 A court may dismiss an action, with prejudice, based on a party’s failure to obey a court order or local
4 rules. *See, e.g., Ghazali v. Moran*, 46 F.3d 52, 53-54 (9th Cir. 1995) (dismissal for noncompliance with
5 local rule); *Ferdik v. Bonzelet*, 963 F.2d 1258, 1260-61 (9th Cir. 1992) (dismissal for failure to comply
6 with an order requiring amendment of complaint); *Carey v. King*, 856 F.2d 1439, 1440-41 (9th Cir.
7 1988) (dismissal for failure to comply with local rule requiring pro se plaintiffs to keep court apprised
8 of address); *Malone v. U.S. Postal Service*, 833 F.2d 128, 130 (9th Cir. 1987) (dismissal for failure to
9 comply with court order); *Henderson v. Duncan*, 779 F.2d 1421, 1424 (9th Cir. 1986) (dismissal for lack
10 of prosecution and failure to comply with local rules).

11 In determining whether to dismiss an action for failure to comply with a court order or local rules
12 or for lack of prosecution, a court must consider several factors: (1) the public’s interest in expeditious
13 resolution of litigation; (2) the court’s need to manage its docket; (3) the risk of prejudice to defendant;
14 (4) the public policy favoring disposition of cases on their merits; and (5) the availability of less drastic
15 alternatives. *Thompson*, 782 F.2d at 831; *Henderson*, 779 F.2d at 1423-24; *Malone*, 833 F.2d at 130;
16 *Ferdik*, 963 F.2d at 1260-1261; *Ghazali*, 46 F.3d at 53.

17 In this case, the Court finds that the public’s interest in expeditiously resolving this litigation and
18 the Court’s interest in managing the docket weigh in favor of dismissal as plaintiff has not advanced this
19 action with his unexplained failure to submit the filing fee or an acceptable application to proceed
20 without prepayment of fees. The third factor -- risk of prejudice to defendant -- also weighs in favor
21 of dismissal, since a presumption of injury arises from the occurrence of unreasonable delay in
22 prosecuting an action. *Anderson v. Air West*, 542 F.2d 522, 524 (9th Cir. 1976). The fourth factor --
23 public policy favoring disposition of cases on their merits -- is greatly outweighed by the factors in favor
24 of dismissal discussed herein. Finally, a court’s warning to a party that his failure to obey the court’s
25 order will result in dismissal satisfies the “consideration of alternatives” requirement. *Ferdik*, 963 F.2d
26 at 1262; *Malone*, 833 F.2d at 132-133; *Henderson*, 779 F.2d at 1424. The July 13 order admonished
27 plaintiff: **“Failure to timely comply with this order will result in a recommendation to dismiss this**
28 **action.”** (Bold in original.) Thus, plaintiff received adequate warning that dismissal will result from

1 noncompliance with this Court's order and failure to prosecute this action. Quite simply, plaintiff has
2 failed to comply with this Court's order or to meaningfully and intelligently respond.

3 **CONCLUSION AND RECOMMENDATION**

4 Accordingly, this Court RECOMMENDS to DISMISS this action without prejudice on grounds
5 plaintiff has failed to: (1) submit the \$350 filing fee or an acceptable application to proceed without
6 prepayment of fees; (2) comply with this Court's order; and (3) diligently prosecute this action.

7 These findings and recommendations are submitted to the district judge assigned to this action,
8 pursuant to 28 U.S.C. § 636(b) and this Court's Local Rule 72-304. No later than September 22, 2006,
9 plaintiff may file written objections with the Court and serve a copy on the magistrate judge in
10 compliance with this Court's Local Rule 72-304(b). Such a document should be captioned "Objections
11 to Magistrate Judge's Findings and Recommendations." The district judge will then review the
12 magistrate judge's ruling pursuant to 28 U.S.C. § 636(b). Plaintiff is advised that failure to file
13 objections within the specified time may waive the right to appeal the district court's order. *Martinez*
14 v. *Ylst*, 951 F.2d 1153 (9th Cir. 1991).

15 IT IS SO ORDERED.

16 **Dated:** August 18, 2006
17 66h44d

/s/ Lawrence J. O'Neill
18 UNITED STATES MAGISTRATE JUDGE

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